

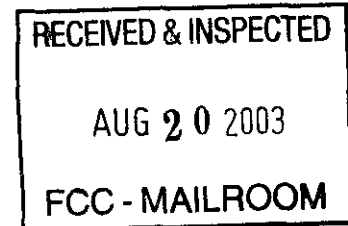


Writer's Direct Dial:  
(305) 552-3929

August 19, 2003

**By Federal Express**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, MD 20743



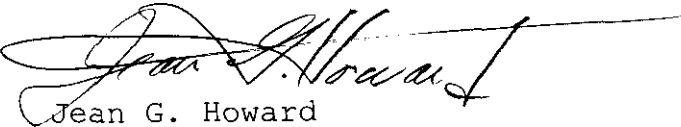
**Re: In the Matter of Inquiry  
Regarding Carrier Current  
Systems Including Broadband  
over Power Line Systems  
ET Docket No.: 03-104**

Dear Ms. Dortch:

Enclosed please find an executed copy of the Reply  
Comments of Florida Power & Light Company in ET Docket No.  
03-104 which were filed electronically on August 19, 2003.  
(Copy of confirmation enclosed).

Thank you.

Yours very truly,

  
Jean G. Howard  
Senior Attorney

JGH/cam

Enc.

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of )  
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Inquiry Regarding Carrier )  
Current Systems, )  
including Broadband )  
over Power Line Systems )  
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To The Commission )

ET Docket No. 03-104

REPLY COMMENTS OF FLORIDA POWER & LIGHT COMPANY

FLORIDA POWER & LIGHT COMPANY

By: Jean G. Howard  
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Its Attorney

August 20, 2003

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )  
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Inquiry Regarding Carrier) ET Docket No. 03-104  
Current Systems, )  
including Broadband )  
over Power Line Systems )

## REPLY COMMENTS OF FLORIDA POWER &amp; LIGHT COMPANY

Florida Power & Light Company ("FPL") submits its Reply Comments on the FCC's Notice of Inquiry Regarding Carrier Current Systems, including Broadband over Power Line ("BPL") Systems ("NOI")<sup>1</sup> to underscore the significant interest expressed by the other commenters in the development of BPL to enhance utility service, reduce costs to utility consumers, and improve security of utility infrastructure. FPL also wishes to address the comments of cable television operators and local exchange carriers who have attempted to use this technical inquiry to

<sup>1</sup> In re *Inquiry Regarding Carrier Current Systems, Including Broadband over Power Line Systems*, ET Docket No. 03-104, Notice of Inquiry, 18 FCC Rcd. 8498 (2003). As more fully explained in its Comments, filed July 3, 2003, in this proceeding, FPL is an electric utility with nearly four million customer accounts serving approximately eight million persons in Florida.

advance their own agenda to delay or prohibit BPL from becoming a competitive broadband access service.

**I. The Comments Express Strong Support for BPL**

The Commission initiated this Inquiry for the express purpose of seeking "information and technical data . . . to evaluate the current state of BPL technology and determine whether changes to Part 15 of the Commission's rules are necessary to facilitate the deployment of this technology."<sup>2</sup> The Commission did so in recognition of its mandate to encourage new and competitive communications technologies, noting that it "has a long history of facilitating the introduction of new technologies under Part 15 of its rules."<sup>3</sup> It further recognized that developments in BPL technology have reached the point where there appears to be a very real potential for BPL technology to "bring valuable new services to consumers, stimulate economic activity, improve national productivity and advance economic opportunity for the American public, consistent with the Commission's objectives."<sup>4</sup>

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<sup>2</sup> NOI, para. 2. See also *Separate Statement of Commissioner Jonathan S. Adelstein* (NOI drafted with sole focus of addressing technical issues associated with BPL systems).

<sup>3</sup> NOI, para. 10.

<sup>4</sup> NOI, para. 9.

The comments filed in this proceeding are consistent with FPL's original Comments recognizing the important public interest benefits that will be realized through deployment of BPL. For example, a number of commenters note that BPL can help utilities conduct their operations reliably through automated meter reading, outage detection, load management, and substation monitoring.<sup>5</sup> There is also widespread agreement among the commenters (except for existing providers of broadband services attempting to preserve their own market share) that BPL could provide a viable competitive alternative for broadband Internet access.<sup>6</sup> To a large extent, the comments arguing that BPL could interfere with licensed radio services lack sufficient technical information for the Commission to conclude that the existing Part 15 limits are insufficient for BPL. FPL therefore urges the Commission to take action in this proceeding that will continue to encourage the development of BPL and to create the regulatory certainty that will be needed for utilities and investors to support this technology.

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<sup>5</sup> See, e.g., Comments of Cinergy Corp. at 3-4; Comments of PPL Telcom, LLC at 4-5; Comments of Southern LINC, et al. at 3-4.

<sup>6</sup> See, e.g., Comments of Hawaiian Electric Company, Inc. at 3; Comments of the United PowerLine Council at 3-4; Comments of Net2Phone, Inc. at 3-4; Comments of the Office of the People's Counsel District of Columbia at 1-3.

## **II. Comments Attempting Delay BPL for Anticompetitive Motives Should Not Be Entertained in this Proceeding**

In Paragraph 19 of the NOI, the Commission suggested that interference issues could arise because of the fact of collocation of cable and telecommunications equipment on the poles of the electric utility. In paragraph 20, the Commission listed as bullet points, 14 questions expressly seeking information with respect to the *technical* issues related to such interference. In paragraph 30, the Commission expressly invited comment on "any other matters or issues, in addition to those discussed above, that may be pertinent to *BPL technology*." (*Emphasis added.*)

As noted above, the comments filed in response to the NOI show that indeed there is a great deal of interest in BPL and that today's technology is such that deployment appears to be both viable and desirable.<sup>7</sup> Some commenters, however, chose to ignore the Commission's request for technical input on the Commission's Part 15 Rules applicable to BPL.<sup>8</sup> Instead, these

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<sup>7</sup> Utilities generally seek clarification in the Part 15 Rules that testing for Access BPL be limited to radiated emissions and that measurement procedures should be standardized and based on representative installations or that existing measurement procedures be retained. See, e.g., Comments of Southern LINC, Southern Telecom, Inc. and Southern Company Services, Inc., and Comments of the United PowerLine Council.

<sup>8</sup> See, e.g., Joint Cable Operator Comments and Comments of Knology, Inc.

commenters seek to confound the Part 15 technical issues with their own competitive concerns arising, if at all, solely under the Commission's jurisdiction over pole attachments under Section 224 of the Communications Act, as amended.<sup>9</sup>

Some commenters seek to delay BPL deployment by requesting the Commission to reconsider its pole attachment rules and regulations and to initiate yet another rulemaking proceeding under the Pole Attachments Act.<sup>10</sup> Such comments are inapposite,

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<sup>9</sup> For example, using innuendo and hyperbole, the Joint Cable Operator Comment to raise issues in this proceeding regarding their ability to access utility property. Similarly, Knology, Inc. requests specific and extensive regulation of electric utilities under Section 224. Other incumbent broadband service providers such as Qwest Communications International Inc., raise issues more concerned with equal opportunity between ILECs and CLECs to compete, and which ultimately would require statutory revision.

<sup>10</sup> See, e.g., Comments of Knology, Inc. at 5, in which it raises four proposals for rulemaking which, if pursued, would delay BPL deployment for years while unnecessary, redundant, time consuming and expensive rulemaking and subsequent litigation runs its course. The potential benefits for rural and other customers, as well as national security enhancement will suffer. Those Internet service providers or broadband providers which would benefit from the "last mile" connection through partnerships with a BPL provider will be unable to do so. There is no basis for the assertion that pole attachment complaints cannot be handled as need arises on a case by case basis under existing FCC rules and regulations. The transfer of pole attachments complaint proceedings to the Enforcement Bureau and its use of alternate dispute resolution techniques have greatly expedited resolution of complaint proceedings. Not only are Knology's proposals not properly a part of this NOI, they request improper regulation of the electric utility itself and, even if within Commission jurisdiction [which FPL asserts are not] would require the very type of onerous regulation which the

irrelevant and should not be sanctioned or condoned in that they demonstrate an intent to thwart BPL deployment and to allow the commenters to themselves engage in anti-competitive behavior.<sup>11</sup>

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Commission has repeatedly stated it seeks to avoid. See *First Report and Order* in CC Docket No. 96-98, 11 FCC Rcd. 15499 (1996) at para. 3 (citing the "pro-competitive, deregulatory goals of the 1996 Act . . . [which] directs [the Commission] . . . to remove not only statutory and regulatory impediments to competition, but economic and operational impediments as well").

<sup>11</sup>The insistence of Knology, Inc. and others that specific and detailed regulation of the electric utility industry must be adopted by the Commission prior to BPL deployment is based solely on the tenuous and unsupported hypothetical that BPL deployment will cause electric utilities to deliberately engage in widespread unauthorized pole attachment practices for the purpose of thwarting pole attachments by third parties. Such supposition is as illogical as it is unfounded. The number of attachments to electric poles in this country in itself attests to the fact that access issues are few and far between. In addition, it is FPL's experience that any "delay" in granting access are due to the failure of the attaching entity, e.g., its failure to accurately complete its pole attachments application, internal turnover of personnel, lack of local manpower, etc., and have nothing to do with "unauthorized practices" of the utility. Rate issues are also not that prevalent given the number of attachments. Rate issues do not in fact impede access but are generally determined long after the fact of access and during continuing access. Moreover, 47 U.S.C. § 224(f)(1) and (2) require nondiscriminatory access except where there is insufficient capacity, and to ensure safety, reliability and sound engineering of the electric infrastructure. The Commission has already adopted rules and regulations prohibiting an electric utility from favoring its communications affiliate or subsidiary and requiring that such affiliate or subsidiary be treated on a nondiscriminatory basis as any other communications company subject to the benefits of Section 224. See *First Report and Order* in CC Docket No. 96-98; 11 FCC Rcd. 15499 (1996) at para. 1157. No electric utility has challenged the rule against nondiscrimination. See also 47 C.F.R. §§ 1.1403(a) and 1.1416(a).



### III. Conclusion

The Commission should not delay deployment of BPL. The Commission should encourage deployment by addressing the technical requirements under its Part 15 jurisdiction.

Comments which rely on hyperbole and misleading or false innuendo should not be given credence or condoned. To do so would grant these incumbent broadband providers the ability to operate free from meaningful competition, which ability they clearly wish to retain.

Respectfully submitted,

Florida Power & Light Company

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Senior Attorney

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**CERTIFICATE OF SERVICE**

I, Miriam C. Garcia, hereby certify that on this 19<sup>th</sup> day of August, 2003, the foregoing Reply Comments of Florida Power & Light Company in ET Docket No. 03-104 was filed by electronic mail for service on:

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, MD 20743

And one copy by U.S. Mail to:

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Chairman  
Federal Communications  
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